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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/655,091	09/05/2000	Johann Meseth	GR 98 P 3112	8366
24131 7590 11/07/2008 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER PALABRICA, RICARDO J	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 11/07/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/655,091

**Applicant(s)**

MESETH, JOHANN

**Examiner**

Rick Palabrica

**Art Unit**

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-10 and 15-20 is/are pending in the application.  
4a) Of the above claim(s) 17-20 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4, 7-10, 15 and 16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/C)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Applicant's 10/3/08 Amendment, which directly amended claim 1 and traversed the rejection of claims in the 7/3/08 Office action, is acknowledged.

Applicant's arguments have been fully considered but they are not persuasive.

#### ***Response to Arguments***

2. Applicant argues that: a) "the argumentation set forth in the Office action appears to be based on ex post facto wisdom derived from the instant application"; b) "none of the references provide an element functioning like the drain pipe 22 recited in claims 1 and 2 of the instant application."

The examiner disagrees.

As to argument a) and the allegation that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Such is the case for the rejection of claims based on the applied art, i.e., the combination of Brettschuh et al. and Schanz.

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As to argument b), applicant asserts that his invention involves two different types of flow connections between the pressure chamber 6 and the condensing chamber 4, i.e., condensing pipe 14 to condense released steam and drain pipe 22 to remove noncondensable gases released in the interior of the containment.

Applicant himself admits that Brettschuh et al. teach all the elements of the claims, except for those directed to the drain pipe (see Remarks on page 11 of the 10/3/08 Amendment). Based on this admission, Brettschuh et al. teaches applicant's claimed condensing pipe.

One of ordinary skill in the art at the time of the claimed invention would have recognized that vapors released into the containment in the event of a nuclear accident inherently include noncondensable gases. This artisan would have known that these non-condensable gases are expected to rise and accumulate near the top of the containment. . He would have further recognized the need to remove these gases because of the hazard they pose to the integrity of the containment, e.g., fire and/or explosion. This artisan, upon review of applied art Brettschuh, would have recognized an important missing element in said reference that has safety implications, i.e., a means to remove noncondensable gases.

Secondary art, Schanz, which the examiner applied in the rejection of claims teaches a nuclear reactor containment, including structural elements for coping with nuclear accidents that release gases, vapors, liquid and solid materials (see col. 4, lines 66+). Schanz specifically teaches vent tubes 180

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disposed at the top of the containment to convey to pool 164 the fluids that rise to the top of drywell 154 in the event of an accident. Schanz specifically teaches noncondensable fluids being part of these conveyed fluids (see col. 7, line 67+).

Clearly, the teaching to remove noncondensable gases by a piping means and the disposition of this means at the top of the containment were derived by the examiner from Schanz and an artisan's own knowledge and NOT from applicant's disclosure.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7-10, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brettschuh et al. ("SWR-1000 – der Siedewasserreaktor der Zukunft", Siemens Power Journal, 2/96) in view of Schanz (U.S. 3,115,450). Brettschuh et al. disclose the applicant's claim limitations except for the drain pipe.

The reasons are the same as those stated in section 3 of the 7/3/08 Office action, as further clarified in section 2 above, which reasons are herein incorporated.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rick Palabrica whose telephone number is 571-272-6880. The examiner can normally be reached on 6:00-4:30, Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 5, 2008

/Rick Palabrica/  
Primary Examiner, Art Unit 3663